

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS - Chairman
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON
LEA MÁRQUEZ PETERSON

In the matter of:)	DOCKET NO. S-21128A-20-0316
Todd Regan Elliott (CRD # 5563784) and)	
Carla M. Elliott, husband and wife, and)	NOTICE OF OPPORTUNITY FOR HEARING
Elliott Financial Group, Inc., an Arizona)	REGARDING PROPOSED ORDER TO CEASE
corporation,)	AND DESIST, ORDER FOR RESTITUTION,
Respondents.)	ORDER FOR ADMINISTRATIVE
)	PENALTIES, ORDER OF REVOCATION,
)	AND ORDER FOR OTHER AFFIRMATIVE
)	ACTION

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Todd Regan Elliott and Elliott Financial Group, Inc. have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") and/or the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act").

The Division also alleges that Todd Regan Elliott is a person controlling Elliott Financial Group, Inc. within the meaning of A.R.S. § 44-1999(B), so that he is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as Elliott Financial Group, Inc. for its violations of the antifraud provisions of the Securities Act.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, the Securities Act and the IM Act.

II.

RESPONDENTS

2. Todd Regan Elliott ("Elliott") has been an Arizona resident since at least November of 1997. Elliott has been licensed as an Arizona insurance producer since May 1, 2019. Elliott is a licensed investment adviser representative with CRD number 5563784 and is employed by an investment advisory firm, outside of his work with Elliott Financial Group, Inc. ("Elliott Financial"). Since November 3, 2017, except when he changed employment, Elliott has been licensed by the Commission as an investment adviser representative. Elliott has not been registered by the Commission as a securities salesman or dealer.

3. Elliott Financial is a company incorporated under the laws of the state of Arizona on July 19, 2007. Elliott Financial is not a licensed investment adviser. Elliott has been a director and the president/chief executive officer of Elliott Financial since July 19, 2007.

4. Elliott Financial has had an Arizona business address since at least July 19, 2007, and has not been registered by the Commission as a securities salesman or dealer.

5. Carla Elliott was at all relevant times, since August 13, 2003, the spouse of Respondent Elliott, (Carla Elliott may be referred to as "Respondent Spouse"). Respondent Spouse is joined in this action under A.R.S. §44-2031(C) and A.R.S. § 44-3291(C) solely for the purpose of determining the liability of the marital community.

6. At all times relevant, Respondent Elliott was acting for Respondent Elliott's own benefit and for the benefit or in furtherance of Respondent Elliott and Respondent Spouse's marital community.

7. Elliott and Elliott Financial may be referred to collectively as "Respondents."

III.**FACTS**

8. Elliott Financial offers and sells various financial services, including retirement income strategies, wealth management, annuities, investments, tax strategies and insurance products through Elliott.

9. Since at least May 22, 2015, Elliott and Elliott Financial solicited Elliott Financial's clients ("Client(s)") to invest in debentures issued by companies controlled by EquiAlt, LLC, including EquiAlt Fund, LLC ("Fund I"), EquiAlt Fund II, LLC ("Fund II"), and EA SIP, LLC ("EquiAlt Debentures"). EquiAlt Debentures promised a fixed rate of return ranging from at least 8 to 10% annually, and the Investors had the option to either receive monthly payments or to re-invest their rate of return.

10. EquiAlt, LLC, EquiAlt Fund, LLC, EquiAlt Fund II, and EA SIP, LLC will be collectively referred herein as "EquiAlt," and those who invested in the EquiAlt Debentures will be referred herein as "Investor(s)."

11. Respondents sold at least 126 EquiAlt Debentures to Investors, totaling at least \$10,859,087.99 invested. The Investors were from Arizona and ten other states, and at least 28 of those who invested through Elliott and Elliott Financial were Arizona residents in their 60s, 70s, 80s and 90s.

12. From at least May 27, 2015, through January 29, 2020, Respondents received at least \$805,662.68 in commissions for their sale of EquiAlt Debentures.

13. Some of the Investors had been Clients of Respondents for many years and trusted them. At least one Investor invested in EquiAlt because he trusted Elliott, even though he would not have invested in the company on his own. At least one other Investor felt that Elliott was looking out

1 for the Investor's best interest. Further, Elliott was the investment adviser representative of at least
2 some of the Investor.

3 14. On multiple occasions, Elliott requested Barry M. Rybicki ("Rybicki"), one of
4 EquiAlt's principals, to contact a potential investor who was on the fence about investing in EquiAlt
5 Debentures or had more money to invest in the future, and give them what Elliott referred to as the
6 "warm and fuzzy" so that they would be more comfortable investing. Prior to the phone calls, Elliott
7 would give insight to Rybicki about the potential investor and their available investment funds. At
8 least some of the Investors invested after receiving the phone call from Rybicki.

9 15. Respondents told Investors that EquiAlt invested in distressed real estate properties
10 and that their investment money in EquiAlt Debentures would be used to purchase and rehabilitate
11 real estate, and to later either lease or sell those real estate properties. Investors were told that they
12 would receive 8% interest on their principal.

13 16. Respondents provided at least some, if not all, of the Investors with marketing
14 material that advertised EquiAlt Debentures as an "[o]ppportunity to make investments in whole
15 distressed Single-Family Real Estate focused on equity [sic] on acquisition [sic] buying and buy-to-
16 rent strategies."

17 17. Elliott advertised to Clients and/or Investors that EquiAlt was debt free and that
18 Investors were going to receive a high interest rate. Elliott convinced at least one Investor to move
19 money from annuities into an EquiAlt Debenture by promising that the Investor would earn a higher
20 interest rate.

21 18. Respondents provided at least some, if not all, of the Investors with EquiAlt's private
22 placement memoranda ("PPMs"), subscription agreements ("Subscription Agreement(s)"), and
23 summary of terms ("Summary of Terms").
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1 19. The PPMs and the Summary of Terms stated that Investors would receive 8 to 10%
2 return on their principal which would be paid either monthly or based on growth through a 3- to 5-
3 year term.

4 20. The PPMs also stated that the purpose of the investment was to generate capital for
5 EquiAlt to "purchase, improve, lease and, or dispose of distressed real property, enter into
6 opportunistic loan transactions and/or engage in other ventures."

7 21. The Subscription Agreements outlined the units that the Investors were purchasing at
8 \$10.00 per unit.

9 22. Investors handed their investment money for EquiAlt Debentures to Elliott. Elliott
10 even helped facilitate the movement of some of the Investors' money from their self-directed IRA
11 into EquiAlt.

12 23. At least some of the Investors would be impacted negatively if they lost the money
13 that they invested in EquiAlt Debentures.

14 24. At least one Investor invested all his savings in EquiAlt Debentures, and if he lost that
15 investment, it would impact his life and his family's life tremendously. At least one other Investor
16 indicated that the loss of the investment money would impact her monthly expenses.

17 25. Many Investors did not have investment experience and/or did not qualify as
18 accredited investors.

19 26. On February 11, 2020, the Securities and Exchange Commission ("SEC") filed a
20 complaint in the U.S. District Court for the Middle District of Florida against EquiAlt, LLC, EquiAlt
21 Fund, LLC, EquiAlt Fund II, LLC, EA SIP, LLC, and related parties. In its complaint, the SEC
22 alleged that EquiAlt has been conducted as a Ponzi scheme since 2011 and has raised over \$170
23 million from over 1,100 investors nationwide.
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1 27. On February 14, 2020, the judge in the SEC case issued an order appointing a receiver
2 for EquiAlt to take immediate possession of all EquiAlt property, assets, and estates.

3 **Untrue Statements and Omissions by Elliott and Elliott Financial**

4 28. Subscription Agreements for the EquiAlt Debentures specifically stated that the
5 “Units are being sold through the Company without commission.” Respondents omitted to tell at
6 least some of the Investors that they were being paid commissions for the sale of the EquiAlt
7 Debentures.

8 29. Respondents misrepresented to at least some of the Investors and/or a Client the risk
9 of the EquiAlt Debentures. Respondents misrepresented to at least one Investor that EquiAlt
10 Debentures were reliable and stable. Further, Elliott told a Client that EquiAlt Debentures were
11 “VERY simple and safe.” Even when one of the Investors expressed the concern that “EquiAlt better
12 not be a Ponzi-Scheme,” Elliott told him that he believed it was a solid investment. Elliott told at
13 least few of the Investors and/or Client that he thought it was a good investment, and that he himself
14 invested or was going to invest in it. The EquiAlt Debentures were actually highly speculative
15 investments, and based on information and belief, Elliott never invested in EquiAlt Debentures.
16

17 30. Additionally, on April 19, 2016, Elliott told an Investor through email the following:

18 I have an equiAlt [*sic*] application for the guaranteed 8% annual return that I’m holding
19 on to. If you want it please let me know as the window of opportunity is closing...I
20 don’t want to hang on to this for much longer. When we last met a few months ago
21 you had the funds in thhat[*sic*] brokerage account and you thought you might need
the funds for your son or something.

22 These were false statements. Not only was the 8% annual return not guaranteed, EquiAlt continued
23 to advertise investments for years to come with the 8% rate of return.

24 31. Respondents misrepresented the liquidity of EquiAlt Debentures to at least some of
25 the Investors. Elliott told at least one Investor that they could withdraw their full investment at any
26 time. Further, Elliott told an Investor that it would take up to 30 days for him to withdraw his

1 investment money. Then after the Investor invested in EquiAlt Debentures and requested to withdraw
2 some of his investment money from EquiAlt, Elliott told him that it would take up to six months to
3 complete the withdrawal. Additionally, Elliott convinced at least one other Investor to invest all of
4 her life savings into EquiAlt Debentures by promising a higher interest rate of 9%, and when the
5 Investor expressed concern about putting everything in one investment, Elliott tried to alleviate the
6 concern by stating that "[i]f we put all the funds in and then down the road we needed to get funds
7 out...we will be able to do that with no penalties, charges or loss of interest...I would recommend
8 getting the 9% for everything as there are no fees or charges for doing so... About a month later after
9 receiving this email, the Investor invested all her life savings into EquiAlt Debentures. There was
10 actually no certainty that Investors could liquidate or transfer an EquiAlt Debenture.
11

12 32. Subscription Agreement outlined the risk as follows:

13 The Subscriber [investor] recognizes that the purchase of the Units involves a high
14 degree of risk in that (i) the Company has limited operation history, (ii) an investment
15 in the Company is highly speculative, and only investors who can afford the loss of
16 their entire investment should consider investing in the Company and the Units, (iii)
the Subscriber may not be able to liquidate his, her or its investment, and (iv)
transferability of the Units is extremely limited.

17 33. Elliott continuously pressured a Client, whom he knew was risk averse, to invest in
18 EquiAlt Debentures by claiming that it was a great opportunity for someone like the Client, who is
19 risk averse, safe, and conservative. This was a false statement as EquiAlt Debentures were highly
20 speculative investments, and as such involved a high degree of risk. Further, Elliott represented in
21 an email to the Client that he only wanted what is best for the Client and not for himself. Elliott
22 omitted to tell the Client that if he were to invest in EquiAlt Debentures, Elliott would receive a
23 commission based on that investment.
24

25 34. On or about April 25, 2016, Respondents misrepresented to at least one Investor the
26 minimum investment requirement. Elliott told an Investor that EquiAlt's management was seeking

1 investments of \$250,000 or more, and when the Investor expressed that he could not invest that
2 amount of money, Elliott told him that he spoke with one of EquiAlt's principals and that the Investor
3 could invest any amount. Upon information and belief, EquiAlt did not have a \$250,000 minimum
4 investment requirement during the time that Elliott made the above representation to the Investor.

5 35. Respondents misrepresented to at least one Investor the legal issues that faced or
6 could face EquiAlt. Elliott told the Investor that only Fund I had "legal issues" and that the Investor
7 would not have to worry about the new money that he was investing in a different fund. This was a
8 false statement, and Elliott was aware that Fund II was exactly the same as Fund I, and as a result
9 Fund II faced or would face the same legal issues as Fund I. On December 31, 2019, the Investor
10 invested \$121,000 on Fund II. EquiAlt was already under investigation before December 31, 2019.
11 Less than two months after the Investor invested in Fund II, the SEC filed an action against EquiAlt
12 and all of its funds, including Fund II.
13

14 36. Respondents misrepresented to at least one Investor the reliability of the payments
15 that they were to receive based on investing in EquiAlt Debentures. Elliott told the Investor that
16 EquiAlt "never missed a payment in the history of the company." Elliott was aware that EquiAlt
17 had not provided timely payments to some of the Investors, and that it had not credited some
18 Investors with the full investment amount. Elliott himself had pointed out to EquiAlt its mistakes
19 late payment issues.
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21 IV.

22 VIOLATION OF A.R.S. § 44-1841

23 (Offer or Sale of Unregistered Securities)

24 37. From on or about May 22, 2015, Respondents offered or sold securities in the form of
25 debentures, notes and evidence of indebtedness, within or from Arizona.

26 38. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
Securities Act.

39. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

40. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

41. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

42. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Respondents misrepresented and/or omitted to at least some of the Investors the payment of commissions, when in fact they received at least \$805,662.68 in commissions from the sale of EquiAlt Debentures;

b) Respondents misrepresented to at least some of the Investors that the EquiAlt Debentures were reliable, stable, very simple, safe and/or solid investments, when in fact the PPM stated that these were highly speculative investments;

c) Respondents misrepresented to at least one Investor that the annual return was guaranteed;

d) Respondent Elliott misrepresented that he invested in EquiAlt Debentures to influence at least some Investors to invest, when in fact Elliott never invested his own funds in EquiAlt Debentures;

e) Respondents misrepresented that to an Investor that he only had a limited time to invest in EquiAlt Debentures and receive the 8% annual rate of return;

f) Respondents misrepresented to at least some of the Investors the liquidity of the EquiAlt Debentures by telling Investors that they could withdraw at any time or that it would take up to 30 days to withdraw, when in fact there was no certainty of when an Investor could liquidate or transfer an EquiAlt Debenture;

g) Respondents misrepresented to at least one Investor the minimum investment requirement in EquiAlt Debentures;

h) Respondents misrepresented and/or misleadingly omitted to at least one Investor that all of EquiAlt's funds were under investigation by the SEC; and

i) Respondents misrepresented to at least one Investor the reliability of the payments that they were to receive based on investing in EquiAlt Debentures.

43. This conduct violates A.R.S. § 44-1991.

VII.

CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

44. From at least July 19, 2007, through at least the present, Elliott has been and/or held himself out as director and president/chief executive officer of Elliott Financial.

45. From at least July 19, 2007, through at least the present, Elliott directly or indirectly controlled Elliott Financial within the meaning of A.R.S. § 44-1999. Therefore, Elliott is jointly and severally liable to the same extent as Elliott Financial for its violations of A.R.S. § 44-1991 from at least July 19, 2007, through at least the present.

VIII.

REMEDIES PURSUANT TO A.R.S. § 44-3201

(Denial, Revocation, or Suspension of Investment Adviser or Investment Adviser Representative License; Restitution, Penalties, or other Affirmative Action)

46. Respondent Elliott's conduct is grounds to revoke his license as investment adviser representative with the Commission pursuant to A.R.S. § 44-3201. Specifically, revocation of Respondent Elliott's license would be in the public interest, and Respondent Elliott has engaged in dishonest or unethical conduct in the securities industry within the meaning of A.R.S. § 44-3201 (A)(13), by making the following untrue statements and misleading omissions:

a) Respondents misrepresented and/or omitted to at least some of the Investors the payment of commissions, when in fact they received at least \$805,662.68 in commissions from the sale of EquiAlt Debentures;

b) Respondents misrepresented to at least some of the Investors that the EquiAlt Debentures were reliable, stable, very simple, safe and/or solid investments, when in fact the PPM stated that these were highly speculative investments;

c) Respondents misrepresented to at least one Investor that the annual return was guaranteed;

d) Respondent Elliott misrepresented that he invested in EquiAlt Debentures to influence at least some Investors to invest, when in fact Elliott never invested his own funds in EquiAlt Debentures;

e) Respondents misrepresented that to an Investor that he only had a limited time to invest in EquiAlt Debentures and receive the 8% annual rate of return;

f) Respondents misrepresented to at least some of the Investors the liquidity of the EquiAlt Debentures by telling Investors that they could withdraw at any time or that it would take up to 30 days to withdraw, when in fact there was no certainty of when an Investor could liquidate or transfer an EquiAlt Debenture;

g) Respondents misrepresented to at least one Investor the minimum investment requirement in EquiAlt Debentures;

h) Respondents misrepresented and/or misleadingly omitted to at least one Investor that all of EquiAlt's funds were under investigation by the SEC; and

i) Respondents misrepresented to at least one Investor the reliability of the payments that they were to receive based on investing in EquiAlt Debentures.

47. Respondent Elliott's conduct is grounds to assess restitution, penalties, and/or take appropriate affirmative action pursuant to A.R.S. § 44-3201. Specifically, Respondent Elliott has engaged in dishonest or unethical conduct in the securities industry, within the meaning of A.R.S. § 44-3201(A)(13), as described above.

IX.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondent Elliott to permanently cease and desist from violating the IM Act pursuant to A.R.S. § 44-3201;

4. Order Respondent Elliott to take affirmative action to correct the conditions resulting from Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-3201;

5. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

6. Order Respondent Elliott to pay the state of Arizona administrative penalties of up to one thousand dollars (\$1,000) for each violation of the IM Act, pursuant to A.R.S. §§ 44-3296 and 44-3201;

7. Order the revocation or suspension of Respondent Elliott's license as investment adviser representative pursuant to A.R.S. § 44-3201;

8. Order that Respondent Elliott and Respondent Spouse be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action; and

9. Order any other relief that the Commission deems appropriate.

X.

HEARING OPPORTUNITY

Each respondent including Respondent Spouse may request a hearing pursuant to A.R.S. §§ 44-1972 and 44-3212 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/hearing>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should

1 be made as early as possible to allow time to arrange the accommodation. Additional information
2 about the administrative action procedure may be found at
3 <http://www.azcc.gov/securities/enforcement/procedure>.

4 **XI.**

5 **ANSWER REQUIREMENT**

6 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
7 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing
8 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
9 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
10 obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at
11 <http://www.azcc.gov/hearing>.

12 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
13 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
14 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
15 addressed to Margaret Lindsey.

16 The Answer shall contain an admission or denial of each allegation in this Notice and the
17 original signature of the answering respondent or respondent's attorney. A statement of a lack of
18 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
19 denied shall be considered admitted.

20 When the answering respondent intends in good faith to deny only a part or a qualification of
21 an allegation, the respondent shall specify that part or qualification of the allegation and shall admit
22 the remainder. Respondents waive any affirmative defense not raised in the Answer.

Dated this 22nd day of October, 2020.

Mark Dinell
Director of Securities